# APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Nos. 16447 and 16450

ROBERT F. KENNEDY, Attorney General
of the United States, *Appellant*

v.

SELINA FOMMEL, ET AL., *Appellees*

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Nos. 16448 and 16449

ROBERT F. KENNEDY, Attorney General
of the United States, *Appellant*

v.

LAURA IRENE DE COURTEN, A/K/A
LAURA IRENE VON COURTEN, *Appellee*

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Appeals from the United States District Court
for the District of Columbia

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Decided March 15, 1962

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*Mrs. Pauline B. Heller*, Attorney, Department of Justice, with whom *Assistant Attorney General William H. Orrick, Jr.*, *Messrs. Morton Hollander* and *Arthur R. Schor*, Attorneys, Department of Justice, were on the brief, for appellant.

*Mr. James H. Mann*, with whom *Mr. John W. Pehle* was on the brief, for appellees. *Mr. Richard Bancroft*, of the

bar of the Supreme Judicial Court of Massachusetts who was on the brief for appellees, was introduced to the court *pro hac vice*, but did not argue.

Before WILBUR K. MILLER, *Chief Judge*, and PRETTYMAN and FAHY, *Circuit Judges*.

PER CURIAM: Under section 9(a) of the Trading with the Enemy Act[1] appellees sued the Attorney General, appellant herein, to recover property vested under the Act by appellant's predecessor as Alien Property Custodian. The vesting orders were five in number. The first was issued in 1947 and the others in 1951.

A suit may be maintained under section 9(a) only by one who is not an "enemy" as that term is defined in section 2(a) of the Act.[2]

During World War II, and until January 1946, appellees concededly were citizens and residents of Germany. They thus acquired enemy status under the Act. They left Germany in January 1946, and entered Switzerland. By reason of evidence of (1) their intent to make Switzerland their permanent home, (2) the renunciation of German citizenship by appellee De Courten and her declaration of intention to maintain Swiss nationality, and (3) the naturalization of the other appellees as Swiss citizens, together with the fact that they were all residing in Switzerland prior to any of the vesting orders, they contend that their previous enemy status was removed before the vesting of their properties and that when the present actions were filed they were no longer enemies within the meaning of the Act.

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[1] 40 Stat. 411 (1917), as amended, 50 U.S.C. App. §§ 1-40 (1958).

[2] Under this provision, an "enemy" is defined in part as "any individual . . . resident within the territory . . . of any nation with which the United States is at war . . . ." 40 Stat. 411 (1917), as amended, 50 U.S.C. App. § 2(a) (1958).

On the authority of *N. V. Handelsbureau La Mola v. Kennedy*, —— U.S. App. D.C. ——, —— F.2d ——, decided during the pendency of these appeals, we hold that the enemy status of appellees for purposes of the Act continued to the time of the vesting orders, thus preventing appellees from maintaining their suits under section 9(a) of the Act.

The judgment in favor of appellees is accordingly reversed, and the cases remanded for dismissal of the complaints for lack of jurisdiction.

*It is so ordered.*

WILBUR K. MILLER, *Chief Judge*, concurring in the result only: While this case was under submission, my brothers here and a third judge handed down a decision in *N. V. Handelsbureau La Mola* v. *Kennedy*[1] which had been heard shortly before the hearing of the present appeals. As I did not participate in that case, I had no opportunity to protest against the decision rendered. Although I do not agree with it, the *Handelsbureau* opinion is a binding precedent which requires reversal here. For that reason only, I concur in the result of the majority opinion in these appeals.

[1] No. 16,471, decided February 1, 1962.

## APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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September Term, 1961. Civil 1237-57

No. 16,447

ROBERT F. KENNEDY, Attorney General
of the United States, *Appellant*,

v.

SELINA ROMMEL, ET AL., *Appellees*.

September Term, 1961. Civil 314-58

No. 16,450

ROBERT F. KENNEDY, Attorney General
of the United States, *Appellant*,

v.

SELINA ROMMEL, ET AL., *Appellees*.

September Term, 1961. Civil 1238-57

No. 16,448

ROBERT F. KENNEDY, Attorney General
of the United States, *Appellant*,

v.

LAURA IRENE DE COURTEN, A/K/A
LAURA IRENE VON COURTEN, *Appellee*.

B-2

September Term, 1961. Civil 313-58

No. 16,449

ROBERT F. KENNEDY, Attorney General of the United States, *Appellant*,

v.

LAURA IRENE DE COURTEN, A/K/A LAURA IRENE VON COURTEN, *Appellee*.

Appeals from the United States District Court for the District of Columbia

Before: WILBUR K. MILLER, *Chief Judge*, and PRETTYMAN and FAHY, *Circuit Judges*.

**Judgment**

These cases came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this court that the judgment of the District Court appealed from in these cases is reversed, and that these cases are remanded to the District Court with directions to dismiss the complaints for lack of jurisdiction.

PER CURIAM.

Dated: Mar. 15, 1962

Separate opinion by Chief Judge Wilbur K. Miller concurring in the result only.

# APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16417

N. V. HANDELSBUREAU LA MOLA, *Appellant*,

v.

ROBERT F. KENNEDY, Attorney General of the United States, as successor to the Alien Property Custodian, *Appellee*.

Appeal from the United States District Court for the District of Columbia

Decided February 1, 1962

*Mr. Dinsmore Adams*, of the bar of the Court of Appeals of New York, *pro hac vice*, by special leave of court, with whom *Mr. Lawrence S. Lesser* was on the brief, for appellant.

*Miss Joan T. Berry*, Attorney, Department of Justice, with whom *Assistant Attorney General William H. Orrick, Jr.*, *David C. Acheson*, United States Attorney, and *John G. Laughlin, Jr.*, Attorney, Department of Justice, were on the brief, for appellee. *Messrs. Arthur R. Schor* and *Walter T. Nolte*, Attorneys, Department of Justice, also entered appearances for appellee.

Before: EDGERTON, PRETTYMAN and FAHY, *Circuit Judges*.

FAHY, *Circuit Judge*: Appellant filed suit in the District Court, relying for jurisdiction upon section 9(a) of the Trading with the Enemy Act,[1] to recover property vested

[1] 40 Stat. 411 (1917), as amended, 50 U.S.C. App. §§ 1-40 (1958).

under the Act by appellee's precedessor as Alien Property Custodian.[2] The property consists of assets of appellant which were on deposit in banks in the United States. By the order now on appeal District Judge Walsh granted appellee's motion for summary judgment. We agree that the suit may not be maintained.

One cannot maintain a suit under section 9(a) to recover vested property unless the claimant is "not an enemy or ally of enemy," to quote the language of the section. "Enemy" is defined in section 2 of the Act as follows:

> (a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.[3]

This definition includes a corporation incorporated within any territory which is occupied by a nation with which the United States, at the time of the occupation, "is at war." Concededly the Netherlands was occupied by military forces of the enemy of the United States during World War II, and concededly also throughout the occupation period appellant was a corporation organized and existing by virtue of the laws of the Netherlands. Appellant accordingly acquired enemy status. It correctly points out, however, that the vesting order was not made until December 15, 1950. It contends that enemy status which bars recovery of prop-

[2] The powers and functions of the Alien Property Custodian were transferred on October 15, 1946, to the Attorney General. Executive Order 9788, 3 C.F.R. 575 (1943-1948).

[3] 40 Stat. 411 (1917), as amended, 50 U.S.C. App. § 2(a) (1958).

erty under section 9(a) must be determined as of the time of the vesting order, and that on December 15, 1950, the occupation had ended and hostilities had ceased, with the effect of ridding appellant of its previous enemy status.

We are not in agreement with the above contention. The war had not ended when appellant's property was vested, or until the Joint Resolution of Congress of October 19, 1951.[4] In this Resolution Congress provided that property which had been subject to vesting and seizure prior to January 1, 1947, would continue to be subject to the provisions of the Act. This included appellant's property, for during the occupation which preceded January 1, 1947, that property had clearly been subject to vesting and seizure. And it had not lost its status by the ending of hostilities prior to January 1, 1947. *Cf. Fegerabend* v. *McGrath*, 89 U.S. App. D.C. 33, 35, 189 F.2d 694, 696.

The purposes of the Act are not fulfilled if all vesting and seizure must be accomplished during hostilities or enemy occupation. Property subject thereto during an occupation is available to control of the enemy in aid of its warfare against the United States and its allies. However, actual vesting might not then be possible. For example, the Custodian might not discover the property during the period of enemy occupation or, if discovered during such period, investigation might entail a considerable period of time before a determination is made that the property is owned or controlled by an enemy within the meaning of section 2 and therefore subject to seizure.

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[4] In declaring the end of World War II Congress provided that, notwithstanding this resolution . . . any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 . . . or which has heretofore been vested or seized under that Act . . . shall continue to be subject to the provisions of that Act . . . .

65 Stat. 451 (1951), 50 U.S.C. App. note preceding § 1 (1958).

Its usefulness to the enemy is not thereby obviated. Rather the contrary. Yet to immunize it because for some reason the vesting authority failed to reduce it to possession until hostilities have ceased, or the occupation ended, would leave untouched property which had been available to enemy control. Such immunization would also deprive the United States of valuable means of supporting its own war efforts. Those efforts, and the heavy responsibilities consequent upon a war, persist long after hostilities have ceased and occupied countries have been freed of the enemy.

For reasons thus suggested we think that in the absence of clearer language indicating the necessity for a different construction the enemy status appellant acquired during the occupation continued, insofar as section 9(a) is concerned, to the time of the vesting order; that is, we think that at that time the end of hostilities and of the occupation of the Netherlands had not removed appellant from the technical enemy status it had acquired during the occupation. *Orme* v. *Northern Trust Co.*, 410 Ill. 354, 102 N.E.2d 335 (1951); *cert. denied*, 343 U.S. 921. If this is so then appellant was an enemy within the meaning of section 9(a) when it filed the present suit.

Stated in a different manner, the definition of enemy in section 2 of the Act, as one who is "resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war" or "incorporated within such territory" is not to be construed as referring only to one who at the date of the vesting order is a resident of or chartered by a nation with which the United States "is [still] at war"; rather, it is to be construed as including a person who or corporation which, at the time of the vesting order, is one who has been a resident of an enemy occupied nation during its occupation or was then incorporated under the laws of an occupied territory and resident therein. "The word 'enemy' . . . of course refers to the person who or corporation which fulfilled the definition of an enemy during the

war." *Swiss Ins. Co.* v. *Miller*, 267 U.S. 42, 45. And lending some support to the position we take is *Hansen* v. *Brownell*, 98 U.S. App. D.C. 239, 234 F.2d 69. And see *Bank Voor Handel En Scheepvaart, N. V.* v. *Kennedy*, — U.S. App. D.C. —, 288 F.2d 375, *cert. denied*, 366 U.S. 962. Compare, however, *Willenbrock* v. *Rogers*, 255 F.2d 236, 238 (3d Cir. 1958).

It is suggested that the construction of "enemy" we adopt, and which has the result of enabling the United States to retain appellant's property without compensation, raises constitutional doubts under the Fifth Amendment. It is urged, therefore, that we should adopt a more limited construction which would preclude the confiscation of appellant's property. If, however, we are right in the reasons we have advanced in support of the construction we give the Act—that is, the efficacy of this construction in enabling the purposes of the Act to be fulfilled—then the same reasons remove the constitutional doubts. The constitutionality of confiscating enemy property in carrying out the war powers of course is not questioned.[5] A reasonable exercise of this aspect of the war powers permits the United States to reach property located within its borders which was available to or whose owner was under the control of the enemy while resident within occupied territory. To require as a constitutional matter that the property be actually vested during the occupation or before the end of hostilities would create a very substantial limitation upon the economies of warfare.

[5] Denying a person recovery of seized and vested property is not a deprivation of property without due process when the claimant is found to be an enemy. "There is no constitutional prohibition against confiscation of enemy properties." *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 11; *Stoehr* v. *Wallace*, 255 U.S. 239, 245; *Uebersee Finanz-Korporation* v. *Brownell*, 133 F. Supp. 615, 620 (D. D.C. 1955), *aff'd sub nom. Von Opel* v. *Brownell*, 100 U.S. App. D.C. 341, 244 F.2d 789, *cert. denied*, 355 U.S. 878. And see *Cummings* v. *Deutsche Bank*, 300 U.S. 115, 120-21.

We are cited to no precedent which holds with appellant's constitutional probings in the circumstances of the present case. The case of *Guessefeldt* v. *McGrath*, 342 U.S. 308, 318, turned on the construction to be given "resident within" Germany. While the Court points out that "friendly aliens are protected by the Fifth Amendment requirement of just compensation," citing *Russian Volunteer Fleet* v. *United States*, 282 U.S. 481, the Court found that the claimant never came within the definition of an enemy. It does not seem to us that this decision requires us to hold that one who concededly acquired, with respect to its property, enemy status during the enemy occupation of the Netherlands, under whose laws it was then incorporated, lost that status, with respect to its property, because the property was not vested while the occupation continued. This would be inconsistent with the purposes of the Act as gathered from its own text and with the congressional intention as expressed in the Joint Resolution of October 19, 1951.

The only reliance for consent of the United States to be sued in this case is section 9(a) of the Act. *Schilling* v. *Rogers*, 363 U.S. 666; *Bank Voor Handel En Scheepvaart, N. V.* v. *Kennedy*, *supra*; *Tiedemann* v. *Brownell*, 96 U.S. App. D.C. 9, 222 F.2d 802. Since that section does not cover the case, and this suit is in substance, though not in name, one against the United States to which it has not consented, the District Court properly awarded judgment for appellee. See *Bank Voor Handel En Scheepvaart, N. V.* v. *Kennedy*, *supra*. It goes without saying that this carries no possible implication of unfriendliness to the Netherlands. It rests solely on a technical enemy status acquired by appellant under the Trading with the Enemy Act by reason of the enemy occupation of the Netherlands and appellant's incorporation therein.

A further matter is noted. Before filing the instant suit in the District Court under section 9(a) appellant had applied to the Attorney General under the provisions of section 32(a)[6] of the Act for discretionary administrative

[6] 60 Stat. 50 (1946), as amended, 50 U.S.C. App. 32(a) (1958).

relief permitted by that section to technical enemies who could not qualify to sue under section 9(a). In response to the application appellee's predecessor advised appellant in writing as follows:

> Enclosed is the Order disallowing the above-numbered claim.
>
> For your information, it is the present practice of this Office, except in cases where a claim is clearly entitled to allowance, to permit the claimant whose right to sue is not barred by lapse of time to his remedy in court and thus avoid the possible delay and expense of a double set of hearings. Such procedure is authorized by an amendment to the Rules of Procedure for Claims of this Office, effective April 16, 1957....
>
> Under the provisions of Section 32 of the Trading with the Enemy Act, a timely suit may be instituted under Section 9(a) of the Act for recovery of the property claimed in the event you are dissatisfied with the administrative action taken on your claim, and the enclosed order of disallowance does not prejudice in any way your right to sue.

On the basis of the foregoing appellant contends that the Government may not in equity and good conscience claim that appellant is ineligible to sue under section 9(a) for any reason other than one which would render it ineligible as a claimant under section 32(a). But the question before the District Court was one of jurisdiction. Whatever relief, if any, appellant may seek on the basis of the previous disallowance of its application under section 32(a), the District Court was without jurisdiction of the complaint in the present case. In this situation we remand for dismissal of the complaint. *Schilling* v. *Rogers*, *supra*; *Tiedemann* v. *Brownell*, *supra*.

*It is so ordered.*

# APPENDIX D

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MARIE LOUISE WILLENBROCK

v.

WILLIAM P. ROGERS, Attorney General of the United States, as Successor to the Alien Property Custodian,

*Appellant.*

No. 12394.

United States Court of Appeals

Third Circuit.

Argued March 18, 1958.

Decided April 22, 1958.

Rehearing Denied May 27, 1958.

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George B. Searls, Washington, D. C. (Dallas S. Townsend, Asst. Atty. Gen., Harold K. Wood, U. S. Atty., for the Eastern Dist. Pennsylvania, Philadelphia, Pa., Irwin A. Seibel, Marbeth A. Miller, Attys., Dept. of Justice, Washington, D. C., on the brief), for defendant-appellant.

T. Henry Walnut, Philadelphia, Pa., for appellee.

Before GOODRICH, STALEY and HASTIE, Circuit Judges.

GOODRICH, Circuit Judge.

This appeal concerns the application of words in the Trading with the Enemy Act, 50 U.S.C.A. Appendix, §§ 1-40. The plaintiff brought suit, under Section 9(a) of the Act, to recover certain property which had belonged to her and which was vested by orders of the Alien Property Custodian in 1947 and 1950. The district judge entered judgment in her favor. Willenbrock v. Brownell,

D.C.E.D.Pa. 1957, 152 F.Supp. 351, and the Attorney General Successor to the Alien Property Custodian,[1] appeals.

The significant facts are few. Miss Willenbrock was German born. She was naturalized in this country in 1928. In 1932, while in France, employed as a governess by an American employer, she went back to Germany to take care of her father and remained in Germany after his death in 1933. Except for eight months she was in Germany from 1932 to 1949. She inherited some property and lived off the income therefrom until the premises were destroyed by a bomb during the war. She lost her first naturalization for reasons not necessary to go into here, and was again naturalized in 1955. The plaintiff's state of mind is summed up by the trial judge in saying that "she never wanted to be considered a German citizen or resident, that she desired to be, at all times, an American citizen and to return to the United States to live when it appeared to her to be possible to do so without sacrificing her German property interests."

Section 9(a) permits suit in the district court by "any person not an enemy" as defined in Section 2(a) of the statute. The question to be decided, therefore, is the very narrow one whether the plaintiff is included within the statutory exclusion. It does not, however, turn upon finding that Miss Willenbrock was or was not an "enemy" of the United States in any literal sense. No one suggests that she was in any way disloyal to her adopted country. The problem is a technical one concerning the interpretation of the language in Section 2(a). There enemy is defined, inter alia, as "any individual * * * residing within the territory * * * of any nation with which the United States is at war."

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[1] Pursuant to Exec. Order No. 9788, 3 C.F.R. 169 (1943-48 comp.), 50 U.S.C.A. Appendix, § 6 note.

During the war was the plaintiff "resident" in Germany? The words "resident" and "residence" have no precise legal meaning although they are favorite words of legislators. Sometimes they mean domicile plus physical presence; sometimes they mean domicile; sometimes they mean something less than domicile. All this is well established and the general statement would not be quarreled with.[2] We think the learned district judge in this case inclined to treat the term as though "residence" in the statute involved domicile. If the issue were domicile a good case could be made for finding that the plaintiff did not become domiciled in Germany because she always intended to return to the United States when she could do so without sacrificing her property interests. Cf. Dupuy v. Wurtz, 1873, 53 N.Y. 556.

We think, however, the authority which controls us here is Guessefeldt v. McGrath, 1951, 342 U.S. 308, 72 S.Ct. 338, 341, 96 L.Ed. 342. While the members of the Supreme Court differed as to one of the points in the case, they did not disagree with Mr. Justice Frankfurter's description of the content of "residence." Backed up by the legislative history the Court said, "'resident within' enemy territory implies something more than mere physical presence and something less than domicile."

If the term means something less than domicile we are quite clear that this plaintiff was resident in Germany. The length of time she was there is certainly indicative. One may, perhaps, stay in a place for seventeen years without becoming domiciled there; surely it is hard to think of a person staying that long without becoming a resident.

[2] See McGrath v. Kristensen, 1950, 340 U.S. 162, 71 S.Ct. 224, 95 L.Ed. 173; United States v. Stabler, 3 Cir., 1948, 169 F.2d 995; Goodrich, Conflict of Laws 50-51, 3d ed. 1949; Beale, Residence and Domicile, 4 Iowa Law Bull. 3, 7 (1918); Reese & Green, That Elusive Word, "Residence," 6 Vand. L.Rev. 561 (1953); Restatement, Conflict of Laws 2d, § 9, com. j (Tent. Draft No. 2, 1954).

Seventeen years is no temporary sojourn by any test. Furthermore, the plaintiff was not constrained to stay in Germany. See Guessefeldt v. McGrath, supra; United States v. Stabler, 3 Cir., 1948, 169 F.2d 995. The fact that one stays in a place by reason of economic desirability does not prevent the acquisition of a domicile there,[3] much less should it prevent one's being a resident.

Our conclusion that plaintiff was resident in Germany is supported by Brownell v. Oehmichen, 100 U.S. App. D.C. 214, 243 F. 2d 637, certiorari denied, 1957, 355 U.S. 842, 78 S.Ct. 49, 2 L.Ed. 2d 1. There is some trouble with Kaku Nagano v. McGrath, 7 Cir., 1951, 187 F. 2d 759, affirmed per curiam by an equally divided Court, 1952, 342 U.S. 916, 72 S.Ct. 363, 96 L.Ed. 685. Perhaps it can be explained, as the Government suggests, by the allegation of Mrs. Nagano that she was compelled to stay with her children in Japan.[4] Be that as it may, we think that the Guessefeldt case cited above gives us our mandate here.

There is a further element in this case, however, which was not brought to the notice of the court by counsel for either party. It was mentioned that there are two vesting orders. One was in 1947 (No. 9925; 12 Fed. Reg. 6797), and the other was in 1950 (No. 16340, 16 Fed. Reg. 107). The 1947 order had to do, according to an exhibit in the case, with the savings account which plaintiff had with the Girard Trust Company of Philadelphia. The vesting order does not say how much is involved but the judgment of the court indicates that it is $1,769.94. What has been said above with regard to "residence" applies to this order because plaintiff was a resident of Germany at the time.

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[3] See 1 Beale, Conflict of Laws § 22.1 (1935); Goodrich, Conflict of Laws § 29 (3d ed. 1949).

[4] When the case came back after remand, the "law of the case" doctrine was heavily emphasized in the court's opinion. Kaku Nagano v. Brownell, 7 Cir., 1954, 212 F. 2d 262.

Now the second vesting order bears date 1950. It has to do with ten shares of Pennsylvania Railroad stock and two declarations of trust certificates issued by City Bank Farmers Trust Company of New York. The value of the property in this seizure according to the judgment in the court below is $6,500. The complaint in this case says that the plaintiff returned to the United States October 16, 1949 and took up her residence in the Eastern District of Pennsylvania. The answer is an enigmatic one because it denies the allegation of this particular paragraph to the effect the plaintiff was a nonenemy. There is no finding of fact on the subject.

Assuming that it can be shown that the plaintiff was a resident of Pennsylvania beginning October 16, 1949, the provision of the statute discussed above does not apply to her. The vesting order applies to the situation existing at its date. Swiss Nat. Ins. Co. v. Miller, 1925, 267 U.S. 42, 45 S.Ct. 213, 69 L.Ed. 504; Rudenberg v. Clark, D.C. D.Mass. 1947, 72 F. Supp. 381, 383.

One more point is to be noticed. Following the description of the property in the second paragraph of the vesting order there is a clause saying:

> " • • • hereby determined:
>
> "3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (Germany)."

Then there is a line drawn to some fine print below which says:

> "all determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest • • • ".

However, this portion of the order seems not to be relevant to our case. The language of the Executive Order 9193, July 6, 1942, 50 U.S.C.A. Appendix, § 6 note, excludes from the category of that which may be seized " • • • credit instruments • • • and securities" except to the extent that the Alien Property Custodian determines that the inclusion of these items is necessary. We have no record of any such determination by him.

It appears, therefore, that the judgment of the court below must be reversed as to the property included in the first seizure of 1947 but as to that which was taken under the 1950 vesting order, it would appear that the plaintiff is entitled to recover if in fact she no longer was a resident of Germany when the 1950 order became effective.

# APPENDIX E

## Fifth Amendment to the Constitution of the United States

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**Trading With the Enemy Act, 40 Stat. 411, as amended, §§ 2(a), and 9(a), Tit. 50 App. U.S.C. §§ 2(a), and 9(a):**

SEC. 2. The word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

SEC. 9:

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property

Custodian or seized by him hereunder and held by him or by the Treasurer of the United States * * * may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title * * * so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. * * *